GURCHARAN SINGH BACHITTAR SINGH

v.

PENGUASA, TEMPAT TAHANAN PERLINDUNGAN KAMUNTING, TAIPING & ORS

FEDERAL COURT, KUALA LUMPUR
STEVE SHIM CJ (SABAH & SARAWAK)
MOHAMED DZAIDDIN FCJ
AHMAD FAIRUZ FCJ
[CIVIL APPEAL NO: 02-7-2000(W)]
12 SEPTEMBER 2002

PREVENTIVE DETENTION: *Extension order - Extension of detention - Internal Security Act 1960, s. 8(7) - Grounds for detention - Absent in extension order - Whether grounds for detention in extension order same as grounds for detention in initial order - Whether order rendered invalid*

The plaintiff had been detained under s. 8(1) of the Internal Security Act 1960 ('the ISA') on the premise that he was a threat to national security. The defendants proceeded to extend his detention for another two years under s. 8(7). This was an appeal by the plaintiff against the decision of the Court of Appeal in upholding the validity of the extension order. The plaintiff contended that the said order was invalid as it did not contain the grounds for his detention. The defendants maintained its validity, arguing that as it was an extension of the original order for detention, reiterating the grounds became unnecessary. This was further substantiated by the fact that clearly the plaintiff had been detained on the first ground stated in s. 8(1) of the ISA.

Held:
Per Ahmad Fairuz FCJ

[1] Section 8(1) of the ISA merely specifies the three purposes for detention. It does not indicate that the grounds ought to be stated in the detention order. The very existence of s. 11(2)(b)(i) of the ISA clearly supports the view that initial orders under s. 8(1) and extension orders under s. 8(7) need not specify the grounds for detention. (pp 256g, 257 f, h & 258 b)

[2] Under the proviso to s. 8(7) of the ISA, the plaintiff would be entitled to a statement if the extension order was made on grounds which were partially or entirely different from those contained in the initial order. However, as the said extension order was premised on the same grounds as the initial order, it could not be deemed a fresh order and therefore the question of representation under s. 11 of the ISA did not arise. (p 258 c & e)

[Appeal dismissed with costs.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Plaintif telah ditahan untuk selama dua tahun di bawah s. 8(1) Akta Keselamatan Dalam Negeri 1960 ('Akta'). Pihak defendan telah melanjutkan tempoh penahanannya untuk dua tahun lagi dibawah s. 8(7) Akta. Ini adalah rayuan plaintif terhadap keputusan Mahkamah Rayuan mengesahkan kesahan perintah lanjutan tersebut. Plaintif menghujah bahawa perintah itu tidak sah kerana ia tidak mengandungi alasan untuk penahanannya. Pihak defendan mempertahankan kesahannya, sambil mengadu yang oleh kerana ia adalah suatu pelanjutan dari perintah penahanan asal, pengulangan alasan-alasan tersebut tidak perlu. Ini lebih lagi disahkan oleh fakta bahawa jelas sekali plaintif telah ditahan di bawah alasan pertama seperti yang dinyatakan dalam s. 8(1) Akta.

Diputuskan:
Oleh Ahmad Fairuz HMP

[1] Seksyen 8(1) Akta hanya menetapkan tiga tujuan untuk penahanan. Ia tidak menunjukkan bahawa alasan-alasan harus dinyatakan dalam perintah penahanan. Kewujudan s. 11(2)(b)(i) Akta dengan jelasnya menyokong pandangan bahawa perintah asal dibawah s. 8(1) Akta dan perintah lanjutan dibawah s. 8(7) tidak memerlukan penetapan alasan-alasan untuk penahanan.

[2] Di bawah proviso kepada s. 8(7) Akta, plaintif berhak kepada satu penyataan sekiranya perintah lanjutan dibuat dibawah alasan-alasan yang sebahagiannya atau keseluruhannya berbeza dari apa yang terkandung dalam perintah asal. Tetapi, oleh kerana perintah lanjutan tersebut berlandaskan alasan-alasan yang serupa dengan perintah asal, ia tidak boleh dianggap sebagai suatu perintah baru dan oleh itu soalan representasi di bawah s. 11 Akta tidak timbul.

Rayuan ditolak dengan kos.]

Case(s) referred to:
Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Another Appeal [2000] 1 CLJ 625 ***(refd)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri [1969] 2 MLJ 129 ***(refd)***

Legislation referred to:
Internal Security Act 1960, ss. 8(1), (3), (7), 11(1), (2)(b)(i)

For the appellants - Karpal Singh (Gobind Singh Deo); M/s Karpal Singh & Co
For the respondents - Abdul Wahab Mohamed

[Appeal from Court of Appeal; Civil Appeal No: W-01-267-96 & W-01-290-96]

Reported by M Maheswaran

JUDGMENT

Ahmad Fairuz FCJ:

The appellant, Gurcharan Singh a/l Bachittar Singh @ Guru, was detained under s. 8(1) of the Internal Security Act (hereinafter referred to as "the Act") for a period of two years. The order detaining the appellant was dated 3 November 1989. On 31 October 1991, the appellant's detention was extended for another two years. The extension order was made under s. 8(7) of the Act and was dated 31 October 1991. On 2 February 1993 the extension order was cancelled. The cancellation order was made under s. 81(3) of the Act and was dated 2 February 1993. The appellant was released on 5 February 1993. On 29 October 1994 he filed a writ of summons in which he asked for, *inter alia*, a declaration that the extension order was null and void and of no effect. The High Court at Kuala Lumpur held that the extension order was null and void. The respondents appealed to the Court of Appeal which, by a majority decision, allowed the appeal and set aside the High Court decision. It held that the extension order dated 31 October 1991 was valid. The appellant obtained leave to appeal to this court and the question referred to us is "whether the extension order is a valid order".

As the extension order was made under s. 8(7) of the Act, it would be appropriate at the outset to set out the provision which reads:

> The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either:
>
> (a) on the same grounds as those on which the order was originally made;
>
> (b) on grounds different from those on which the order was originally made; or
>
> (c) partly on the same grounds and partly on different grounds;
>
> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly.

It was argued on behalf of the appellant that this section makes it imperative for extension orders to state the grounds of detention so that the person detained after the expiry of the detention order would be able to know whether he could make any representations under s. 11 of the Act. The appellant contended that the grounds had not been stated in the extension order. As, such, the order, according to the appellant, was invalid.

For the respondents, it was argued that the extension order is not a new order. It is an extension of the original detention order (hereinafter referred to as "the initial order") dated 3 November 1989. To the respondents, the grounds stated in the initial order are applicable to the extension order, unless the extension order is based on grounds which are different from those stated in the initial order. It was also contended that s. 8(1) of the Act specifies three grounds and the initial order states in clear terms that the appellant was detained on the first ground, ie, that his activities were prejudicial to the security of Malaysia. As such the extension order is a valid order.

On the issue of whether the grounds for detention must be stated in the extension order, Mokhtar Sidin JCA, said:

> In my view the normal and natural meaning of an extension order is an extension of the initial order in entirety unless otherwise stated. It means whatever grounds stated in the initial order are applicable to the extension order unless different grounds or partly on different grounds are stated as provided for by section 8(7). It should be remembered that the extension here is the extension of the length of his detention under the Act. If it is true that the extension order here did not state any ground, I am of the view that one must fall back to the initial order to see the grounds for detention. It cannot be assumed that the extension order was on different grounds or partly on different grounds.

At p. 159 of the Appeal Record (AR), the learned judge, when referring to the extension order, remarked that the same three paragraphs as found in the first preamble of the initial order were also found in the extension order. The translated version of the paragraphs reads:

> Whereas I am satisfied that this Order is necessary to be issued against the person named below with a view of preventing from acting in any manner prejudicial to:
>
> (a) the security of Malaysia;
>
> (b) the maintenance of essential services in Malaysia;
>
> (c) the economic life of Malaysia.

The learned judge then pointed out that paras. (b) and (c) in both the initial and extension orders had been deleted. This, according to the learned judge, means that the appellant "was detained under the initial order and the extension order solely on the ground that his activities were prejudicial to the security of Malaysia." The learned judge therefore held that "it is not correct to say there was no ground given or stated in the extension order." Commenting on the appellant's contention that the ground stated in the extension order is not

as required by the Act which required the grounds to be as stated in the statement under s. 11(2) of the Act, the learned judge opined, at p. 120 of the appeal record, that the statement sets out in detail the activities of a detainee "which led the minister coming to the conclusion that there were grounds to detain the detainee. The grounds were stated in the order and the statement. The statement also contained allegations of facts and the charges. The purpose of this statement was to enable the plaintiff to prepare his case against the charges and the allegations made against him when he made his representations before the advisory board. The statement ... were nothing more but detailed particulars of his activities. The ground of his detention was that his activities were prejudicial to the security of Malaysia. To me, that was the ground of his detention in the initial order. The same ground was also used for his continued detention under the extension order. Since the continued detention was on the same ground there was no necessity to supply him with the statement under s. 11(2) anymore as stated by the proviso to s. 8(7)."

In his judgment, NH Chan JCA, said:

> I have had the advantage of reading the judgment in draft of My Lord Mokhtar Sidin, JCA and I agree with him that the appeal of the plaintiff should be dismissed.

And as to the issue of grounds not being stated in the extension order NH Chan JCA, said:

> Under section 8(1) there are three grounds or reasons for which a person can be detained under the ISA. These grounds or reasons for detaining a person are necessary, according to the ISA, to prevent such a person from acting in a manner that would be prejudicial to the security of Malaysia or to the maintenance of essential services in the country or to the economic life of the country. So that, if the Minister thinks that the detention of the person is necessary for any one of those three grounds or reasons, he can make an order for that person's detention for up to two years under the ISA.

Referring to grounds stipulated under s. 11(2) of the Act, the learned judge, *inter alia*, said:

> At the same time he must also be furnished by the Minister with a statement in writing of the grounds on which the order was made (section 11(2)(b)(i)), the allegations of fact on which the order was based (section 11(2)(b)(ii)), and any other particulars that the Minister might wish to let him have ((section 11(2)(b)(iii)).
>
> As required by section 11(2)(b) the plaintiff was furnished with a written statement of the grounds on which the detention order was made and the allegations of fact on which the order was based ... .

> ... Strictly speaking, the written statement under section 11(2)(b) should give (i) the grounds on which the detention order was made, and (ii) the allegations of fact on which the detention order was based. The grounds on which the detention order was made were the grounds that were given for his detention under section 8(1).

As to the ground appearing in the extension order the learned judge said:

> As can be seen from this document, grounds (b) and (c) in the text of this order have been deleted, so that the sole ground or reason for the extension of the period of the detention order on the plaintiff was ground (a) (which was for preventing him from acting in any manner prejudicial to "the security of Malaysia") which was the same ground as the one in the original detention order. In other words, the plaintiff's original detention order had been extended for a further period of two years on the same ground or reason as the one on which the detention order was originally made. In both the original detention order and the extended detention order the plaintiff was detained solely on the ground or reason that his detention was necessary to prevent him from taking part in activities that were prejudicial to the security of Malaysia.

As to the necessity of grounds under s. 11(2) in cases of extension orders, the learned judge said:

> ... unless section 11 applies (and in my judgment I hold that it does not apply to the present case because the extended order was made on the same ground as that on which the original order of detention was made) there was no requirement to furnish the plaintiff with a written statement of the grounds on which the extended order was made an the allegations of fact on which the order was based (under section 11(2)(b)(i) and (ii)). Here, in the present case, there was no need to supply the grounds on which the extended detention order was made (under section 11(2)(b)(i)) nor the allegations on which the order was based (under section 11(2)(b)(ii) all over again as that had already been supplied to him when the original detention order was made. Since the ground (reason) that was given for his continued detention in the extended detention order was the same as the ground (reason) in the original detention order, the proviso to subsection 7 of section 8 would not apply to the plaintiff in the present case. It was, therefore, not required for the plaintiff (whose detention was extended for the same reason or ground as the reason or ground in the original detention order) to be furnished with a written statement of the grounds and allegations under section 11(2)(b).
>
> For section 11(2) to apply when a detention order is extended under section 8(7), the extension must be made on different grounds or partly on different grounds. It will not apply, as in the present case, when a detention order is extended on the same grounds as the grounds on the original detention order.

On this same issue of whether the grounds must be stated in the extention order. Malek Ahmad JCA, in his dissenting judgment, said:

> In my view, reading and re-reading the said provision, whether the grounds for detention in the extension order are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order, the grounds for detention must be stated before the proviso to that subsection can come into effect. There is certainly no suggestion at all that where the grounds for detention are the same in the extension order as in the detention order, they need not be stated as they are implied. At the very least, the person under detention should be informed in writing that the grounds for detention in the extension order are the same as the grounds for detention in the detention order even if they are not so stated specifically.

As to whether the grounds should be in the extension order, the learned judge said:

> The proviso says that if a detention order is extended on different grounds or partly on different grounds, the person to whom it relates shall have the same rights under section 11 of the Act as if the order extended was a fresh order.
>
> Does this then mean that where the grounds for detention in the extension order are the same as the grounds for detention in the detention order, then the person detained is not entitled or loses his entitlement to make representations? This appears to be the only conclusion one can draw from the relevant provisions in the Act but this is the more reason why it is imperative that the grounds for detention must be stated for all extension orders so that the person detained after the expiry of the detention order will be able to know whether he can make any representations at all based on the grounds for detention stated in the extension order whether they are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order ...
>
> Since the grounds for detention have not been stated in the extension order, I would agree with the learned trial judge that the extension order is invalid.

As to whether the grounds for detention are as stated in s. 8(1) or s. 11(2) Malek Ahmad JCA, said:

> I would like to stress the point that "purposes" and "grounds" are two different things. The purposes are as stated in subsection (1) of section 8 of the Act but the grounds for detention must be given in the statement in writing as provided for in subparagraph (1) of paragraph (b) of subsection (2) of section 11 of the Act together with the allegations of fact and other particulars as stated in subparagraphs (ii) and (iii) of that same paragraph.

> Accordingly, the words "the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof" in subsection (1) of section 8 of the Act are definitely not the grounds for detention but only the purposes for the detention.
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> My view is strengthened by the use of the word "purposes" in subsection (5) of section 8 of the Act which begins with "If the Minister is satisfied that for any of the purposes mentioned in subsection (1) ... . So when the words "acting in any manner prejudicial to the security of Malaysia" appear in both the detention order and the extension order, they do not qualify as a ground for detention but only as a purpose for the detention.

In support for his view, the learned judge referred to the case of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri* [1969] 2 MLJ 129 at p. 147 wherein the Federal Court *inter alia* said:

> In my judgment, the words "with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein" in section 8(1)(a) of the Internal Security Act do not indicate the grounds for a person's detention; they indicate its purpose or purposes. It is true that the grounds for a person's detention must be given, but grounds are quite distinct from purposes.
>
> ... Put in different words, what the grounds supplied and the order of detention say is this: because (grounds) you the appellant have since 1957 consistently acted in a manner prejudicial to the security of Malaysia, the Yang di-Pertuan Agong is satisfied that it is necessary to direct that you be detained with a view to (purposes) preventing you from acting in any manner prejudicial to the security of Malaysia or to the maintenance of public order or to the maintenance of essential services in Malaysia ... But in my judgment there is no need for the grounds to be identical with any or all of the purposes of detention. The grounds supplied could be in words totally different from the statement of the purposes of detention.

For the reasons given by the learned judge (Malek Ahmad JCA) I agree that s. 8(1) merely specifies the three purposes for detention. Thus in the context of the aforementioned relevant provisions of the Act, the grounds must mean the grounds referred to in s. 11 of the Act which reads:

> **11. Representations against detention order**
>
> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.

(2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:

(a) be informed of his right to make representations to an Advisory Board under subsection (1); and

(b) be furnished by the Minister with a statement in writing:

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representation against the order to the Advisory Board.

(3) The Yang di-Pertuan Agong may make rules as to the manner in which representations may be made under this section and for regulating the procedure of Advisory Boards.

As section 11(1) makes reference to s. 8(1), it would therefore be appropriate for me to cite the section. Section 8(1) reads:

8. Power to order detention or restriction of persons

(1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

I find nothing in s. 8(1) that can indicate that grounds are to be stated in the detention order. I have also read through carefully the other subsections of s. 8 and found that only s. 8(7) makes mention of "grounds". I had, at the outset of my judgment, quoted s. 8(7) of the Act. The proviso to s. 8(7) unequivocally specifies that those whose detentions have been extended on different grounds or partly on different grounds are entitled to exercise the same rights under s. 11 as if the extended orders are initial orders. In other words, they are entitled to make representations against the extension orders to the Advisory Board. Such entitlement would invoke the application of s. 11(2)(b) which, *inter alia*, requires the detainee to be furnished with a statement in writing of the grounds on which the extension order was made. The very existence of s. 11(2)(b)(i) would clearly support my view that the initial orders under s. 8(1) and the extension orders under s. 8(7) need not specify the grounds. Otherwise s. 11(2)(b)(i) would be redundant. Anyway, I cannot find anything in s. 8(7) that can even suggest that the grounds must

be stated in the extension order. If grounds are not expected to be stated in the initial order how can then it be expected that they, should be in the extension order when that extension order merely directs that the duration of the detention order be extended for a certain further period not exceeding two years at a time? As such, I am of the view that it is not necessary to state the grounds in the extension order. In the circumstances the appellant's contention that the grounds must be stated in the extension order is without merit.

Having held that grounds need not be stated in the extension order the question that now arises is whether the appellant is entitled to be served with the statement under s. 11(2)(b)(i) of the Act? It is obvious from the proviso to s. 8(7) that the appellant is entitled to the statement if the extension order is made on grounds different from those stated in the initial order or if the extension order is made partly on the same grounds and partly on different grounds from those stated in the initial order. This is so because the proviso stipulates that under those circumstances the extension order is to be considered as if it was a fresh order and hence the appellant is entitled to make representations to the advisory board under s. 11 of the Act. And the statement is required by s. 11(2)(b)(i) of the Act. This evidently means that if the extension order is made on the same grounds then the order is not deemed a fresh order and therefore no question of representation under s. 11 arises and consequently no statement under s. 11(2)(b)(i) is required. Simply stated, a statement under s. 11(2)(b)(i) of the Act need not be made in cases where the extension order is made on the same grounds as those on which the initial order was made. On this issue I am in agreement with NH Chan JCA's view as quoted above. For the reasons stated above, my answer to the question referred to this court is in the affirmative ie, the extension order is a valid order.

I have shown this draft judgment to my learned brothers, Mohamed Dzaiddin, Chief Justice, and Steve Shim Lip Kiong, Chief Judge of Sabah and Sarawak, who agreed with it.

Accordingly, this appeal is dismissed with costs. Deposit to the respondents to account of taxed costs.